

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Chad Turcotte,

Complainant,

vs.

Todd Dahl,

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS
AND ORDER**

The above-entitled matter came on for an evidentiary hearing on October 19, 2010, before a panel of three Administrative Law Judges: Bruce H. Johnson (Presiding Judge), Beverly Jones Heydinger and Eric L. Lipman. The OAH hearing record closed on October 20, 2010, upon receipt of the parties' post-hearing memoranda.

Brian P. Farrell, Attorney at Law, Brian P. Farrell, P.A., appeared on behalf of Chad Turcotte (Complainant).

Patrick M. Krueger, Attorney at Law, Borden, Steinbauer, Krueger & Knudson, P.A., appeared on behalf of Todd Dahl (Respondent).

STATEMENT OF ISSUE

Did Respondent violate Minn. Stat. § 211B.07 by using undue influence to compel Complainant to vote for him in the general election.

The panel concludes that the Complainant has failed to establish that Respondent violated Minn. Stat. § 211B.07.

Based upon the entire record, including the facts stipulated to by the parties, the panel makes the following:

FINDINGS OF FACT

1. Complainant Chad Turcotte is a deputy sheriff in Crow Wing County, Minnesota. Sheriff Dahl is the Crow Wing County Sheriff. As sheriff, Repondent Dahl is four ranks above Investigator Turcotte in the chain of command. Sheriff Dahl is running for reelection in November.^[1]

2. Eric Klang, another deputy in the Crow Wing County Sheriff's Office, is challenging Sheriff Dahl in the upcoming election for sheriff. Deputy Klang previously served as Crow Wing County Sheriff. Klang lost the election to Sheriff Dahl in 2006.

3. During his tenure as Sheriff, Klang hired Turcotte as a deputy.^[2]

4. Investigator Turcotte supported Klang for reelection in 2006. Until August 2010, Sheriff Dahl was not aware that Investigator Turcotte supported Klang in the 2006 election. Klang is now a patrol deputy in the Sheriff's Office.^[3]

5. Investigator Turcotte's wife is employed as a dispatcher in the Sheriff's Department.^[4]

6. In the fall of 2009, Turcotte was promoted to an investigator position within the Sheriff's Department, effective January 2010. Turcotte must serve a probationary period of one year in the investigator position, and until the probation ends in January 2011, Turcotte can be removed from the position at the Sheriff's pleasure and without cause. The investigator position is a promotion over a patrol deputy position. As an Investigator, Turcotte earns more money, has better hours and works on more interesting assignments than he would if he were a patrol deputy.^[5]

7. On August 7, 2010, Investigator Turcotte posted a photograph to his Facebook account of his two children standing in front of a Klang campaign sign. The campaign sign was a deputy star that had "Klang" written on it and was affixed to the side of a vehicle. The photograph was taken at the fairgrounds during the 2010 Crow Wing County Fair. In the picture, the children were giving a thumbs-up gesture and appeared to be indicating their support for Deputy Klang.^[6]

8. The picture was one of five photographs from the County Fair that Investigator Turcotte posted to his Facebook account on August 7, 2010. He did not directly send or email the picture to anyone.^[7]

9. Sheriff Dahl is one of Turcotte's Facebook "friends." As one of his "friends," Sheriff Dahl received electronic notice that Turcotte had posted new photos on his Facebook page. On August 8, 2010, either Sheriff Dahl's wife or child logged on to Dahl's Facebook account and saw the picture that Turcotte posted of his children in front of the Klang sign. Sheriff Dahl's wife or child alerted Dahl to the posting, who then viewed the picture. Dahl sent Turcotte an instant message via Facebook stating "nice pic."^[8]

10. Prior to August 8, 2010, Sheriff Dahl was not aware that Turcotte supported Deputy Klang's bid for office.^[9]

11. On August 9, 2010, Sheriff Dahl summoned Investigator Turcotte to his office. Dahl and Turcotte were seated throughout the conversation that followed; Sheriff Dahl sat behind his desk and Investigator Turcotte sat facing him. The Sheriff closed his office door at the beginning of the meeting and, for the next forty five minutes, reprimanded and berated Turcotte for posting the picture to Facebook. Sheriff Dahl was unaware that Turcotte surreptitiously recorded this meeting.^[10]

12. As the discussion began, Investigator Turcotte and Sheriff Dahl raised their voices. Investigator Turcotte stated that he did not want to start a fight. Sheriff Dahl agreed that Turcotte should not fight because Turcotte, "would not win that fight."^[11]

13. Captain Neal Gaalswyk heard the raised voices from his office – which was located two doors down from the Sheriff's office -- and recognized these as the voices of Investigator Turcotte and Sheriff Dahl. It was unusual for the Sheriff to be in a heated conversation with one of the deputies in his office. Concerned, Captain Gaalswyk sent a text message to Lieutenant David Larson, Turcotte's immediate supervisor, to inform him that this conversation was occurring.^[12]

14. During the meeting, Dahl threatened and demeaned Turcotte. He stated that posting the picture to Facebook violated the Sheriff's trust and would affect their work relationship. Dahl told Investigator Turcotte, "I don't trust you at all," and referred to Investigator Turcotte as a "Klang-backer." Dahl thundered that "if [the picture had] never been on Facebook, this [conversation] wouldn't be happening now."^[13]

15. At one point in the conversation Dahl advised Turcotte that there could be "possible consequences of supporting a different candidate."^[14]

16. At another point during the harangue, Dahl asked Turcotte pointedly, "Where's your loyalty?" He also questioned Turcotte as to whether Deputy Klang had made promises to Turcotte in order to obtain his support.^[15] Sheriff Dahl stated that Turcotte was disloyal and might now, or in the future, face consequences for his lack of loyalty. Moreover, Sheriff Dahl told Turcotte that if he were "backstabbed" again, they would have another conversation "off-duty or on-duty." The Sheriff admonished Turcotte to "keep in mind" that he, Dahl, was the one who placed him in the "promotional opportunity."^[16]

17. Twice Sheriff Dahl stated that Turcotte was the only investigator who supported Klang. He stated "I 100% promise you're the only one back there [in investigations] who wants that person [Klang] to be in this seat (indicating his seat)" and that "I don't think there is an investigator out there who doesn't put up a sign for me."^[17] Sheriff Dahl intimated that he would tell the other investigators and deputies that Turcotte had violated his trust and that the other investigators and deputies would no longer be able to trust Investigator Turcotte.^[18]

18. Dahl told Turcotte that the posting of the photograph “does affect our work relationship.” He asked aloud, rhetorically, “Do I give you any more projects between now and November?...There’s never been a question about you before now...I don’t know...I don’t know.” He lamented throughout the conversation that he didn’t know what he was going to do.^[19] He stated “I saw this kid [Investigator Turcotte] with all this potential; [gave] him deputy of the year status and [threw] him back in investigations; should I have?...now I don’t know.”^[20] Dahl stated that he didn’t know if Investigator Turcotte should even be working in the Sheriff’s Department.^[21] At one point he said, “I will do what I have to do; I will do that,” and later he stated “do you think things will be the same as before the election?”^[22]

19. At one point in the conversation Sheriff Dahl signaled his frustration that Turcotte was not more contrite or willing to concede that posting the photograph was wrong. “I have a 135 IQ. Maybe I’ll write that in crayons and you can take it back to your office and try to understand it.” Later he stated “maybe you should take your crayons and go home.”^[23]

20. Throughout the conversation, Sheriff Dahl made numerous references to an earlier sheriff election between Crow Wing County Deputies Frank Ball and Dick Ross. This election was contentious and it had a divisive effect on the Sheriff’s office. Ross won the balloting and immediately demoted Ball from his deputy patrol assignment, reassigning him to midnight shifts in the county jail. References to the “Ball-Ross days” are understood by those in Sheriff’s office as connoting harsh employment and career reprisals against those who are on the losing side of elections for Sheriff by those who prevail.^[24]

21. Sheriff Dahl pointed to Ball’s reassignment and stated the reassignment happened because “people got involved where they shouldn’t have gotten involved.”^[25] He said he did not want to see that kind of divisiveness in the current sheriff’s race.

22. Twice during the conversation, Sheriff Dahl told Investigator Turcotte that he did not care if Turcotte cast a ballot for Klang on Election Day. He said that he would “write it down in crayon that he did not care who he [Turcotte] voted for.”^[26]

23. At another point in the conversation, Dahl told Turcotte that the posting of the picture on Facebook was worse than placing a campaign sign in his yard because more people would see the Facebook posting. As the Sheriff reasoned, few people would see the campaign sign in Turcotte’s yard or associate the lawn sign with Turcotte’s status as an Investigator in the Sheriff’s Department.^[27]

24. At yet another point in the conversation, Sheriff Dahl asked Turcotte if he “was going to do what he had to do to rebuild the trust between them.” Investigator Turcotte interpreted this “rebuilding” to mean that he needed to change his allegiance, remove the picture from his Facebook account and vote to re-elect Sheriff Dahl.^[28]

25. During the conversation on August 9, 2010, Sheriff Dahl did not mention his family and did not discuss how or when he first saw the picture on Facebook, or that

someone in his family saw the picture. At the hearing, Sheriff Dahl contended that he was upset by the Facebook posting because it was a personal insult sent directly to his family.

26. Sheriff Dahl never explicitly told Investigator Turcotte that he would be fired or demoted.

27. After the conversation occurred, Turcotte was upset and concerned about his position in the Sheriff's Department. He wondered how he would be able to work for someone who did not trust him. He was unable to sleep at night. He shared his concerns with Captain Gaalswyk and Lieutenant Larson.^[29]

28. Since the August 9, 2010 meeting, Investigator Turcotte's duties, responsibilities and schedule within the Department have not changed.^[30]

29. On September 17, 2010, Investigator Turcotte filed this complaint alleging that Sheriff Dahl violated Minn. Stat. § 211B.07.

Based upon the foregoing Findings of Fact, the panel makes the following:

CONCLUSIONS

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Minn. Stat. § 211B.07 provides:

211B.07 UNDUE INFLUENCE ON VOTERS PROHIBITED

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

3. The burden of proving the allegations in the complaint is on the Complainant. The standard of proof of a violation of Minn. Stat. §211B.07 is a preponderance of the evidence.^[31]

4. Investigator Turcotte failed to demonstrate by a preponderance of the evidence that Sheriff Dahl threatened coercion, harm, or loss in order to compel him to cast a ballot for the Sheriff in the fall election.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

ORDER

IT IS ORDERED:

That the Complaint against Todd Dahl is DISMISSED.

Dated: October 25, 2010

s/Eric L. Lipman for

Bruce H. Johnson
Presiding Administrative Law Judge

s/Beverly Jones Heydinger

Beverly Jones Heydinger
Administrative Law Judge

s/Eric L. Lipman

Eric L. Lipman
Administrative Law Judge

Reported: Digitally recorded, no transcript prepared.

NOTICE

This is the final decision in this case, as provided in Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

The issue in this matter is whether Sheriff Dahl violated Minn. Stat. § 211B.07 by threatening reprisals against Chad Turcotte in order to compel Turcotte to vote for him.

Minn. Stat. § 211B.07 provides:

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

The statute prohibits the use of force or coercion to compel an individual to vote for or against a candidate.

At the hearing, Sheriff Dahl explained that he was hurt and offended that Turcotte had posted the picture on Facebook. Dahl testified that he believed that Investigator Turcotte had sent the picture to him directly. He believed that Turcotte intended Dahl's family to see the picture and that the posting was a personal affront.

Yet, Sheriff Dahl's courtroom explanation is entirely inconsistent with his earlier references to the public relations and political aspects of Turcotte's posting. At no time during the August 9 meeting, did Sheriff Dahl state that it was uncomfortable for his family to view the posting. Rather, Dahl complained it was that the broad exposure of the photo on Facebook, where the public could view it, that enraged him.

Dahl denies that he attempted to coerce Turcotte to change his vote or directed his threats toward the act of voting.

Reluctantly, we agree. While Sheriff Dahl's behavior and reaction to Investigator Turcotte's support of Klang is contemptible, it does not constitute a violation of section 211B.07. Sheriff Dahl sought to suppress Turcotte's public dissent; not obtain his vote.

Thus, the facts of this case are readily distinguishable from those in *Fritz v. Hanfler*.^[32] In *Hanfler*, persons receiving welfare assistance were specifically told by the candidate that failure to cast a vote for him could result in loss of their public assistance. Although the statute in effect at that time differed from the one before us, the Court found that there had been an intentional, deliberate attempt to coerce a specific vote – and that such practices are “a menace to good government and to the liberties of the people.” The Respondent's behavior in this case, attempting to quash political opposition and debate, was not a clear attempt to coerce a specific vote.

Similarly, the Minnesota Court of Appeals' decision in *Menne v. Phillips*, is instructive. In that case, the appellate panel found that no violation of § 211B.07 had occurred, despite the fact that the incumbent office holder had used threatening language against those who posted the lawn sign of his challenger. The incumbent distributed flyers stating that if the lawn signs supporting his opponent were not removed it would "not go unnoticed in the future."^[33] The Court of Appeals found that the "vaguely ominous-sounding language" used in the flyer did not violate section 211B.07. *Menne* instructs that there must be a clear nexus between coercive behavior and voting. Here, the nexus between Sheriff Dahl's behavior and Investigator Turcotte's vote is not sufficient to establish a violation of section 211B.07.

Even if one were to conclude that section 211B.07 is ambiguous and that the phrases "to vote" or the "free exercise of the right to vote" could be read to include the right to speak freely in support of a candidate, the rule of lenity would preclude this broader interpretation of the statute. The rule of lenity states that "[w]hen the statute in question is a criminal statute, courts should resolve ambiguity concerning the ambit of the statute in favor of lenity."^[34] Here, the statute allows for the imposition of a criminal penalty. Although this tribunal cannot impose that penalty, it can impose a monetary sanction upon Sheriff Dahl. Applying the rule of lenity prohibits pursuing the "spirit" of the criminal law when its text refers to other, specific forms of prohibited conduct.

Likewise important, other statutes point up the gap in this case. Section 211B.09 prohibits an employee from using official authority or influence to compel political activity, but does not prohibit coercion to *restrict political activity*. Section 211B.13 prohibits any person from promising something of monetary value to induce a voter to refrain from voting or vote in a particular way, but does not address the withholding of career opportunities. Investigator Turcotte did not allege violations of these sections of the statute, possibly because they are not directed to curtailing speech, but rather prohibit an exchange of political favors for votes.

Although Sheriff Dahl's statements do not violate section 211B.07, his behavior cannot be condoned. By explicitly linking Turcotte's choice among the two Department employees vying for election with Turcotte's eligibility for advancement, opportunity for career-building assignments and esteem among the officers and staff supporting Dahl, Sheriff Dahl intended to chill Turcotte's free expression of public support for Klang. Dahl sought to intimidate his subordinate and to keep him quiet. In our view, Sheriff Dahl's conduct on August 9, 2010 interfered with the rights of free speech and association that are the hallmarks of elections in a democracy.

B.H.J., B.J.H., E.L.L.

^[1] Testimony of Chad Turcotte.

^[2] Testimony of Neal Gaalswyk.

^[3] *Id.*

^[4] Test. of C. Turcotte.

- [\[5\]](#) *Id.*
- [\[6\]](#) *Id.*
- [\[7\]](#) Test. of C. Turcotte; Ex. 1.
- [\[8\]](#) Testimony of Todd Dahl.
- [\[9\]](#) Test. of C. Turcotte.
- [\[10\]](#) Test. of C. Turcotte; Test. of T. Dahl; Ex. 2.
- [\[11\]](#) Ex. 2 at 3:27.
- [\[12\]](#) Testimony of Neal Gaalswyk; Testimony of David Larson.
- [\[13\]](#) See Ex. 2 at :42, 2:35, 4:50, 6:30, and 19:30.
- [\[14\]](#) Test. of T. Dahl.
- [\[15\]](#) Ex. 2 at 9:20, 10:00.
- [\[16\]](#) Ex. 2 at 1:45.
- [\[17\]](#) Ex. 2 at 2:20 and 8:40.
- [\[18\]](#) Ex. 2 at 21:44.
- [\[19\]](#) See Ex. 2 at 2:30, 3:01, 7:45.
- [\[20\]](#) Ex. 2 at 12:15.
- [\[21\]](#) Ex. 2 at 40:00; Test. of C. Turcotte.
- [\[22\]](#) Ex. 2 at 4:20 and 14:10.
- [\[23\]](#) Test. of C. Turcotte; Test. of T. Dahl.
- [\[24\]](#) Test. of N. Gaalswyk.
- [\[25\]](#) Ex. 2 at 35:55.
- [\[26\]](#) Test. of C. Turcotte; Test. of T. Dahl.
- [\[27\]](#) Test. of T. Dahl.
- [\[28\]](#) Test. of C. Turcotte.
- [\[29\]](#) Test. of D. Larson; Test. of N. Gaalswyk.
- [\[30\]](#) Test. C. Turcotte; Test. of T. Dahl.
- [\[31\]](#) Minn. Stat. § 211B.32, subd. 4.
- [\[32\]](#) 195 Minn. 640, 263 N.W. 910 (1935).
- [\[33\]](#) 2008 WESTLAW 2102721 at *2-3 (Minn. App.) (unpublished).
- [\[34\]](#) *State v. Stevenson*, 656 N.W.2d 235, 238 (Minn. 2003); *see also State v. Walsh*, 43 Minn. 444, 445, 45 N.W. 721, 721 (1890) (“A statute is not to be deemed to make an act criminal, which would not have been so except for the statute, unless the intention of the legislature to effect that result is apparent, and not seriously doubtful”).